Court No.3

Criminal Appeal No. 97 of 2002

Jitendra alias Bhuri ……. Appellant (Accused)

Versus

Statre of Uttaranchal ……. Opposite party.

……..

Hon'ble Irshad Hussain J.

Heard Sri Vivek Shukla, learned counsel for the appellant (accused) and learned Addl. Government Advocate.

In this appeal, appellant Jitendra aliar Bhuri has been convicted and sentenced, under Section 25 of the Arms Act, to undergo rigorous imprisonment for one year, vide judgment and order date 21.3.2002 passed by learned Sessions Judge, Hardwar.

The allegation against the appellant was that on 30.8.2000 a country made Pistol 315 Bore and three live cartridges were recovered by the Police on the pointing of the appellant, as according to him the said fire arm was used in the commission of the crime of murder on 21.8.2000. The appellant was charge-sheeted for offence punishable under Sections 147,148,149 and 302 of the I.P.C. alongwith others as well as under Section 25 of the Arms Act and the Sessions Trial arising out of this case crime No.176 of 2000 was consolidated for trial alongwith other Sessions Trials in relation to the substantive offences. From perusal of the judgment, it is evident that six witnesses were examined by the prosecution and since the witnesses of the fact have turned hostile and they did not support the prosecution version, the appellant was acquitted of the charges under Sections 148,302/149 of the I.P.C. However, on the basis of the fact that the learned defence counsel has dispensed with the formal proof of the prosecution documents pertaining to the recovery of the country made Pistol and live cartridges, the learned Sessions Judge proceeded to hold the appellant guilty of the offence by observing that on the basis of the memo of recovery of the said firm arm and cartridges, the charge against the appellant stand proved. It is evident that no

oral evidence of the recovery was adduced by the prosecution. Thus, there was no substantive evidence on record to connect the recovery of the said firm arm and live cartridges with the appellant and merely on the basis of the memo of recovery, it could not have been held that the charge against the appellant stand proved. It is thus obvious that in fact there was no evidence on record to prove the charge under Section 25 of the Arms Act against the appellant. The learned Sessions Judge has committed illegality in convicting and sentencing him to undergo rigorous imprisonment for one year under Section 25 of the Arms Act.

Since the prosecution has not adduced any evidence in regard to the alleged recovery, no useful purpose would have been served by remanding the case for re-trial. There is thus no alternative but to allow this appeal and set aside the conviction of the appellant under Section 25 of the Arms Act. appeal is accordingly allowed and the judgment and order dated 21.3.2002 convicting and sentencing the appellant under Section 25 of the Arms Act is set aside.

The appellant shall be released forthwith, if not required in connection with any other criminal case.

(Irshad Hussain, J.)

26.7.2002
P.Singh